

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SCOTT EMERSON EVATT,

Plaintiff,

v.

PAUL SIMBECK, *et al.*

Defendants.

CASE NO. 3:24-cv-05772-TMC-GJL

REPORT AND RECOMMENDATION

Noting Date: **March 17, 2025**

The District Court has referred this prisoner civil rights action filed pursuant to 42 U.S.C. § 1983 to United States Magistrate Judge Grady J. Leupold. This matter is on review following Plaintiff Scott Emerson Evatt's failure to cure his initial filing deficiencies or respond to the Court's Show Cause Order regarding the same. *See* Dkts. 4, 9. For the reasons set forth below, the undersigned recommends this action be **DISMISSED without prejudice** for failure to comply with a court order and failure to properly prosecute.

I. DISCUSSION

On September 12, 2024, Plaintiff, proceeding *pro se*, initiated this action by filing an incomplete *In Forma Pauperis* (IFP) Application and a Proposed Complaint. Dkts. 1, 1-1. Because Plaintiff failed to cure his IFP deficiencies or pay the filing fee before the deadline

1 established by the Clerk's Office, the Court directed Plaintiff to accomplish one of the following
2 on or before November 18, 2024: (1) file a complete IFP Application including a certified copy
3 of his Prison Trust Account Statement, (2) show cause why he cannot file a complete IFP
4 application by that date, or (3) pay the \$405.00 filing fee. Dkt. 4. The Court advised Plaintiff that
5 failure to satisfy one of these requirements by the stated deadline would result in a
6 recommendation that this action be dismissed for failure to properly prosecute and failure to
7 comply with a court order. *Id.* Plaintiff moved for a continuance, and the Court extended the
8 deadline to correct the IFP Application, show cause, or pay the filing fee until February 14, 2025.
9 Dkts. 8, 9.

10 The extended deadline elapsed with no completed IFP Application, show cause response,
11 or filing fee received from Plaintiff.¹ *See docket.* Instead, Plaintiff filed a notice of change of
12 address on February 13, 2025, notifying the Court that he has been released from incarceration.
13 Dkt. 12. Plaintiff's notice is not responsive to the Court's Show Cause Order. *Id.* Furthermore,
14 Plaintiff filed a new general civil case raising the same claims addressed here and paid the filing
15 fee in the new action. *See Evatt v. Simbeck, et al.*, No. 3:25-cv-05162-GJL (W.D. Wash. filed
16 Feb. 26, 2025). Because Plaintiff has failed to correct his initial filing deficiencies in this case by
17 the stated deadlines and, instead, pursued a new action based on the same claims, the Court finds
18 Plaintiff has abandoned and failed to properly prosecute this action.

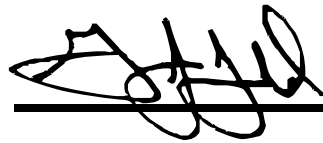
19 II. CONCLUSION

20 For the above stated reasons, the undersigned recommends this action be **DISMISSED**
21 **without prejudice** for failure to comply with a court order and failure to properly prosecute.
22
23

24 ¹ Although the Court's Show Cause Order (Dkt. 4) and Order granting an extension (Dkt. 9) were initially returned as undeliverable, both Orders were remailed on December 2, 2024, and neither has been returned. *See docket.*

1 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), the parties
2 shall have fourteen (14) days from service of this report to file written objections. *See also* Fed.
3 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of
4 *de novo* review by the district judge, *see* 28 U.S.C. § 636(b)(1)(C), and can result in a waiver of
5 those objections for purposes of appeal. *See Thomas v. Arn*, 474 U.S. 140, 142 (1985); *Miranda*
6 *v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012) (citations omitted). Accommodating the time
7 limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on **March**
8 **17, 2025**, as noted in the caption.

9 Dated this 28th day of February, 2025.

10
11 

12 Grady J. Leupold
13 United States Magistrate Judge
14
15
16
17
18
19
20
21
22
23
24